
BZA-1847
PERRY KIRKHAM
Special Exception

STAFF REPORT
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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, with consent of owners, his parents Gary and Mary Jo Kirkham, is requesting a special exception for an outdoor recreation operation (SIC 7999). The proposed agricultural and educational business will be open seven days a week, 8 a.m. until midnight, with activities ending no later than 10 p.m. on weekdays. The property, currently operating as a U-pick orchard with a farm produce stand (permitted by right in the A zone), is located on CR 200 E, just south of its intersection with Wea School Road, at 5618 CR 200 E, Wea 21 (SE) & 22 (SW) 22-4 (UZO 3-2).

AREA ZONING PATTERNS:

The subject property, as well as most surrounding land, is dominated by the Agricultural zone (A). As the Wea Creek forms a portion of the northern boundary of petitioner's property, there is some associated Flood Plain zoning near the creek and low-lying areas. A small portion of I3 zoning is located to the west as part of Purdy Materials mining operation; those 3.71 acres were rezoned specifically for a batch plant in 2006 (Z-2295).

This request is the second of its kind to come before the ABZA. The first special exception (and subsequent expansion) for an agricultural entertainment business—Exploration Acres—was approved in 2008 and again in late summer 2011 (BZA-1759 & -1834).

AREA LAND USE PATTERNS:

Petitioner's home, outbuildings and two barns are currently on-site. Since September 2011, petitioner has operated a U-Pick orchard at the property under the name Wea Creek Orchard. In addition to growing produce, petitioner operates a small farm market located outside of one of the barns which sells items like jams, jellies, apple butter and produce.

The surrounding area is used primarily agriculturally. A few pockets of residential uses are located north on Wea School Road as well as south in the Tranquil Ridge subdivision which contains about two dozen homes. The Wea Community Center, baseball fields and Trustee's office are located farther north; Purdy Materials mining operation abuts petitioner's site to the west.

TRAFFIC AND TRANSPORTATION:

According to daily traffic counts taken in 2010, 837 vehicles pass this site along CR 200

E. There are currently two gravel access locations onto 200 E. According to the County Highway Department, petitioner's southernmost "existing access (installed last year under a farm field access permit) meets our geometric requirements for a commercial drive." Even though petitioner has labeled the northern driveway as "private" on the site plan, to ensure adequate access and safety standards, staff will recommend a recorded commitment that all commercial traffic must use the southern entrance and reserve the northern driveway for residential purposes only.

Parking requirements for petitioner's proposed use (SIC 7999) are not specifically spelled out in the Unified Zoning Ordinance; parking standards for uses that are not listed "shall be as determined by the Administrative Officer." Staff, petitioner and the Building Commissioner (the Administrative Officer) worked together to come up with a parking standard of 150. This is based on what staff and the AO felt was necessary to accommodate the most vehicle-intense of petitioner's proposed uses and estimated attendance. In addition to providing 160 required parking spaces (four of which are handicapped accessible), petitioner has shown areas for overflow parking on the south side of the site.

Petitioner's application estimates typical weekend traffic to the orchard at 150 cars per day. Traffic during the week and daytime hours will vary, but will be less intense than weekend and event traffic. County Highway stated that they do not have concerns about additional traffic generation, only that there is "adequate parking to avoid the possibility of overflow parking along CR200E."

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

There is an existing septic system for petitioner's home. According to the County Health Department, a commercial grade septic was installed in May, 2011 for the barn; its location is shown on the site plan. A single well provides water to both the residence and the barn.

Petitioner has been in contact with the Health Department regarding food sales and vendors. The petition indicates that "any food or drink will be produced on site at the farm, will be provided by an outside vendor or will be approved by the county health department under their regulations." Food sales by outside vendors—regulated by the health department—are permitted under SIC 7999.

Some uses classified under SIC 7999 are considered open uses and require larger setbacks; petitioner's use *does not* require any additional setbacks.

STAFF COMMENTS:

Starting in the summer of 2011, petitioner has operated his family farm as a U-Pick Orchard under the name Wea Creek Orchard. Customers can come to the property and pick produce including peaches, apples and pumpkins. Petitioner has also been operating a small market stand that sells items on and off-site (like jams, apple butter and some produce).

When petitioner first approached staff in summer 2011, it was because it had come to our attention that weddings open to the public had been held at the orchard; that use is considered a catering hall (SIC 58) and is not permitted in the A zone. At that time, petitioner explained his vision for the property to staff and agreed to petition for a special exception to incorporate his ideas for agricultural entertainment and educational activities. The following is an illustrative list of the types of activities petitioner has proposed (in addition to the existing orchard and farm):

- Nature field trips
- Straw and corn maze
- Hayrides
- Picnic Area
- Boy and Girl Scout outings
- Festivals
- Food vendors
- Parties, events, reunions, weddings

Petitioner has been in contact with the County Highway Department, Building Commission, Health Department and Wea Township Fire about this project. Driveway access meets highway standards, current sales of produce and value-added items meet health department requirements, the septic system to serve the barn is adequate and the electrical system to the barn was upgraded in January 2011. Petitioner is currently working with his engineer, KJG Engineer, Inc and the state to obtain a release for the barn, allowing it to open for events.

The amount of required parking shown is sufficient per the Administrative Officer based on petitioner's estimates of attendance; areas for overflow parking are provided on the site plan. All other development standards including greenspace and setbacks are met. Noise produced by this kind of operation could have a negative affect on surrounding uses. However, the immediate area is sparsely populated and all activities must end at 10 p.m. on weekdays and midnight on weekends (including events such as weddings or festivals). Outdoor lighting as described—security lighting for parking—is typical of agricultural uses. Petitioner anticipates the need for portable lighting during autumn harvest in the orchard. However, the nearest residence to the orchard is well over 500' to the south and the potential for adverse affects from lighting is low. Traffic generated by this use may be heavy at times; however, most visitors to the site will arrive and stay for long periods of time, especially during the more vehicle-intensive uses such as events and weddings. The property has been operating as a U-Pick orchard and staff is not aware of any complaints regarding existing traffic to the site. Additionally, county highway has not expressed any concerns about increased traffic. Proposed business hours are should also not have a negative affect on neighboring uses.

This request represents the second project of its kind in Tippecanoe County; the first was Exploration Acres on Newcastle Road. Since its approval Exploration Acres has become hugely successful, increasing annual visitors 30% from 2008-2010. With Exploration Acres' expansion request heard in September 2011 (BZA-1834), hosting weddings and other public events was permitted as accessory to the primary use.

Because Exploration Acres has a gated entrance and requires admission, petitioner's representative contended that customers would pay to enter, patronize the business and then use the reserved barn space for an event.

Staff and legal counsel agree that we were too permissive allowing Exploration Acres to host an unlimited number of events with no limits on attendance. Staff recognizes the need for revisions to the zoning ordinance regarding agri-tourism as other property owners may continue to approach staff with similar ideas. Rental of barns and other agricultural structures seems to be becoming a more popular idea, particularly for weddings, retreats and other gatherings. Currently the UZO requires commercial zoning for catering and rental halls (SIC 58). In the meantime, petitioner has applied for as part of the special exception request, the ability to host these types of events.

The only standard available in the ordinance by which staff can hold petitioner with regard to public events is the winery section (UZO Amendment 43). A winery, also permitted by special exception, can hold public events with the following limitations:

“Attendance at private events is limited to 85 persons per event. Public events are limited to 3 event days per month and 15 event days per calendar year. Private events at which attendance exceeds 85 persons shall be considered a public event.”

Effectively, the ordinance does not limit the number of “private” events and larger events—which will generate more traffic—are limited to 3 per month and 15 per year. Until (or if) an ordinance amendment is passed that proposes more comprehensive regulations on agri-tourism businesses with the ability to host events, petitioner has agreed to these limitations. Petitioner also understands that any structure open to the public must have a design and/or construction release from the state; staff recommends a condition that before any events are held at petitioner's barn, state release(s) must be obtained.

Petitioner has consulted with staff regarding the size and placement of a proposed sign. A revised site plan should be submitted to staff showing its location and size.

The Executive Committee of the Area Plan Commission at its January 4, 2012 meeting voted that granting this request would not substantially adversely affect the Comprehensive Plan.

Regarding the ballot items:

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for this use (SIC 7999) in this zoning district.

And it is staff's opinion that:

2. The requirements and development standards for the requested use as prescribed by the Unified Zoning Ordinance **WILL** be met. Petitioner's site plan provides sufficient parking, all building setbacks are met and no additional development standards apply.
3. Staff's biggest concern is increased traffic from private events. Because events will be limited by the same standards that regulate events at wineries, granting the special exception for the expansion of an existing agricultural operation **WILL NOT** subvert the general purposes served by the Ordinance.
4. Granting the special exception **WILL NOT** materially and permanently injure other property or uses in the same district and vicinity because of:
 - a. Traffic generation: Though traffic may be heavy during proposed events, including weddings and festivals, county highway has no concerns about CR 200 E handling the proposed traffic. Because petitioner has provided sufficient parking, traffic and overflow parking will not cause an adverse affect on neighboring properties.
 - b. Placement of outdoor lighting: Outdoor lighting consisting of security lights in parking areas and potential portable lighting for orchard activities
 - c. Noise production: Most typical everyday noise—farm equipment, traveling cars, and noise from the U-Pick operation is consistent with an agricultural area. Noise produced from events will be occasion and will not be intrusive because of
 - d. Hours of operation: Monday through Thursday 8 a.m. until 10 p.m. and Friday, Saturday and Sunday until midnight should not be disruptive to this light residential and agricultural area.

STAFF RECOMMENDATION:

Approval with the following condition and recorded commitment:

CONDITION:

1. Before any events open to the general public are held in petitioner's barn, appropriate state releases from the Indiana Department of Homeland Security shall be obtained.

COMMITMENT:

1. Commercial traffic shall be restricted to the southern entrance; the northern drive shall be used for residential purposes only.

Note: A special exception approval ceases to be valid if the use is not established within one year of the date that the special exception was granted.